

(1960) 10 MP CK 0030

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Petition No. 55 of 1960

Prakash Chandra Nathulal Jain

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 14-10-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 29(2)

Citation : AIR 1962 MP 48

Hon'ble Judges : V.R. Newaskar, J;H.R. Krishnan, J

Bench : Division Bench

Advocate : Chajed, for the Appellant;

Final Decision : Dismissed

Judgement

Krishnan, J.—This is a petition of an unusual nature by an unsuccessful candidate for admission to one of the medical colleges in the Madhya Pradesh. His contention is that he has the prescribed qualification for admission, but has been refused even though certain other candidates who have secured lower marks have been admitted. Accordingly, he prays that this Court should interfere under Article 226 and issue a mandatory direction to the State of Madhya Pradesh that he should be admitted in one of the medical colleges. The petition has various other allegations and newspaper cuttings which are however, quite unnecessary for the decision of the case either way and do not really support his prayer. The sheet anchor of his case is that there are rules made by the Government on the subject of admission to medical colleges; these "rules" have been printed and circulated to intending candidates. Under them in particular, Rule 8, the petitioner feels he is qualified and has a right to be admitted. As he has not been admitted, it is urged that the Government has contravened the rule and as such should be directed to comply with it which according to the petitioner will have the effect of his admission.

2. While it is certainly possible to sympathize with the unsuccessful candidate, no direction can be issued in this regard. To be sure, there is a pamphlet circulated

by the Government entitled "Medical Colleges, Rules of Admission 1960" and the petitioner has filed his copy which was presumably sent to him along with the application form, but it is not a rule in the sense of a statute or one made under a statute; it is in effect a declaration of the policy of the Government in regard to admissions in the medical colleges. This view is justified by the rule which mentions that whatever might have been stated in this pamphlet, "Government reserve to themselves the right to admit any student in relaxation of the rules in special circumstances". In other words, compliance with Rule 8 will not by itself entitle a candidate to get admission. The total number of seats is limited and whenever, a candidate is to be admitted in special circumstances in relaxation of Rule 8 he will admittedly be keeping out another who otherwise might have secured that seat.

3. Rule 8 contains certain criteria, in particular on merits as disclosed by the marks obtained at the Inter Science Examination; but it does not say "only on merit as disclosed by the marks obtained". Again various Universities or Examination Boards have been recognized, and the assessment of relative merits of candidates from different Universities or different Boards is a very difficult matter. While one can assert that a candidate who has secured 50 per cent in one subject in University should be deemed to be more meritorious for the purpose of Rule 8 than a candidate who has secured 4-5 per cent in the same examination in the same University or the same Board, it cannot be said that when they come from different Universities or have been examined by different Boards, or as for that matter, by the same University or Boards in different years, the relative merit follows the respective percentage of marks. We are not laying down, any general principle, but only indicating that every "merit as disclosed by the marks" is not a simple mechanical or cast iron test when different examining bodies and different years are concerned.

4. But that is not all. Other circumstances as the age of the candidate, the interest he evinces as shown by the immediacy or delay on the part of the candidate after passing the qualifying examination may also have to be taken into account. No doubt Rule 7 lays down the minimum age, but then there is no reason why it should be read as to imply that a candidate of 20 years securing 50 per cent should necessarily be preferred to a candidate of 18 years with 45 per cent. Further, a candidate who seeks admission to a medical college immediately after passing the qualifying examination may be considered to be more keen and enthusiastic than the one who waits for some time. All this is mentioned, not with the least intention of laying down a standard or a principle for guidance in this regard which is not the business of the High Court, but only to point out that selection of a candidate depends upon quite a large number of factors; some alone have been mentioned and defined in the so called rules. Certainly "other things being the same" a person more meritorious as disclosed by the marks obtained in the Intermediate Science Examination should be preferred to a person who is less meritorious on the same ground: but the trouble is, the "other things" are rarely, if ever "the same". At all events, this

Court is not in a position and cannot take over the function of deciding whether in a particular context the other criteria were the same or as for that matter, what the other criteria are.

5. The Constitution, itself does not attempt to provide for such a situation, except negatively. There is Article 29 especially, Sub-article (2) which provides:

"No citizen shall be denied admission to any educational institution maintained by the State or receiving aid out of State funds, on grounds only of religion, race, caste, language or any of them."

It is of interest to note that sex and domicile have not been mentioned. In the well known case *The State of Madras Vs. Srimathi Champakam Dorairajan*, , a particular candidate was denied an admission as having belonged to a particular caste. Certainly the Courts disapproved of it. But it is not the case of the petitioner that he has been denied admission as belonging to a certain caste. The case reported in *The State of Bombay Vs. Bombay Education Society and Others*, , has been cited on behalf of the petitioner. But that has really no bearing on the present case. There the Government of Bombay wanted to dictate in which language the citizen's child should be educated. But that is not the position here. It is also theoretically conceivable that a candidate who is told that he would be admitted, is subsequently turned out, Government having changed the criteria "afterwards". Then other considerations arise. That is also not the position here. As usual, a main list was published followed by a supplementary list and possibly a third list as well Government trying to do its best for as many candidates as possible. The petitioner has mentioned this; but that obviously is no reason why Government should be ordered by this Court to admit the appellant also.

6. For obvious reasons, it would be impossible for a Government to admit into a professional college anything more than a small fraction of the candidates seeking admission. Accordingly, selection becomes necessary. When it becomes necessary, certain particular principles have to be enunciated not as statutory provisions which shall be followed in every case, but as a declaration of policy or a code for guidance of the authorities concerned. They cannot at all be exhaustive and there is always something left for the selecting authority who has to assess the total effect On the advisability of admission, of a number of criteria. Certainly there should be no ulterior purpose, and every authority should try its best to make a selection that would be fair considering all the factors.

But these factors are imponderable and incapable of any mechanical or absolutely objective measure. So, Government usually appoint selection committees consisting of experts with high academic qualifications and predominantly academic turn of mind. These bodies themselves make recommendations; but it is usual for Government to accept the recommendations except in very rare circumstances. For the Law Courts to interfere in such matters would be altogether improper as they have neither the training, nor

authority to substitute their assessment of the total effect of these factors for that of the expert academic body appointed by the Government. Anyway, there is no legislative sanction for such interference.

7. The petition is dismissed summarily.

Newaskar, J.

8. I agree.